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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE:

Office: Vermont Service Center

Date:

JUN 24 2003

IN RE: Applicant:

APPLICATION:

Application for Permission to Reapply for Admission into the
United States after Deportation or Removal under Section
212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8
U.S.C. 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole on March 8, 1993. An Order to Show Cause was served on her on February 20, 1995. On September 7, 1995, an immigration judge denied the applicant's applications for political asylum, withholding of deportation and voluntary departure and ordered the applicant deported to Mexico. The Board of Immigration Appeals (the Board) dismissed an appeal of that decision on February 11, 1998. She failed to surrender for removal on April 29, 1998. Therefore, she is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

The applicant initially sought permission to reapply for admission into the United States on November 1, 2001, under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), to legalize her status.

On July 31, 2002, the director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The AAO affirmed that decision on appeal on January 8, 2003.

On motion, the applicant states that she has been in the United States for more than 9 years, is a person of good moral character, and her husband is in the process of becoming a U.S. citizen. The applicant submits evidence that she married [REDACTED] a native of the Dominican Republic, on January 31, 2003, following the dismissal of her appeal and while in deportation proceedings.

The AAO informed the applicant on appeal that the Bureau, following more recent judicial decisions and Congressional amendments, has accorded less weight to an applicant's equities gained following the commencement of removal proceedings, if the equities were gained while the applicant was unlawfully present in the United States or after a violation of law.

Further, the court held in *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. The equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992), cert. denied, 507 U.S. 971 (1993). It is also noted that the Ninth Circuit Court of Appeals in *Carnalla-Muñoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that after-acquired equities, referred to as "after-acquired family ties" in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded

great weight by the district director in considering discretionary weight.

The applicant in the present matter entered the United States unlawfully in March 1993, was served with an Order to Show Cause in February 1995, and was ordered deported in September 1995. The Board dismissed her appeal in February 1998, she failed to surrender for removal in April 1998, and married her spouse on January 31, 2003, while in deportation proceedings and following the dismissal of her appeal. She now seeks relief based on that after-acquired equity.

The favorable factors in this matter are the applicant's family ties and the absence of a criminal record.

The unfavorable factors in this matter include the applicant's unlawful entry, her being ordered deported, her failure to appear, her failure to surrender for removal, and her lengthy presence in the United States without a lawful admission or parole. The Commissioner stated in *Matter of Lee*, 17 I&N Dec. 275 (Reg. Comm. 1978), that residence in the United States could be considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. To reward a person for remaining in the United States in violation of law would seriously threaten the structure of all laws pertaining to immigration.

The applicant's actions in this matter cannot be condoned. Her equity (marriage) gained while being unlawfully present in the United States, and entered into while in deportation proceedings, can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Attorney General's discretion is warranted. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed. The order of January 8, 2003, dismissing the appeal is affirmed.